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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1971

No. 72-374

IDA OLUND,
Plaintiff-Appellee,

vs.

RUSSELL L. SWARTHOUT,
Defendant-Appellant.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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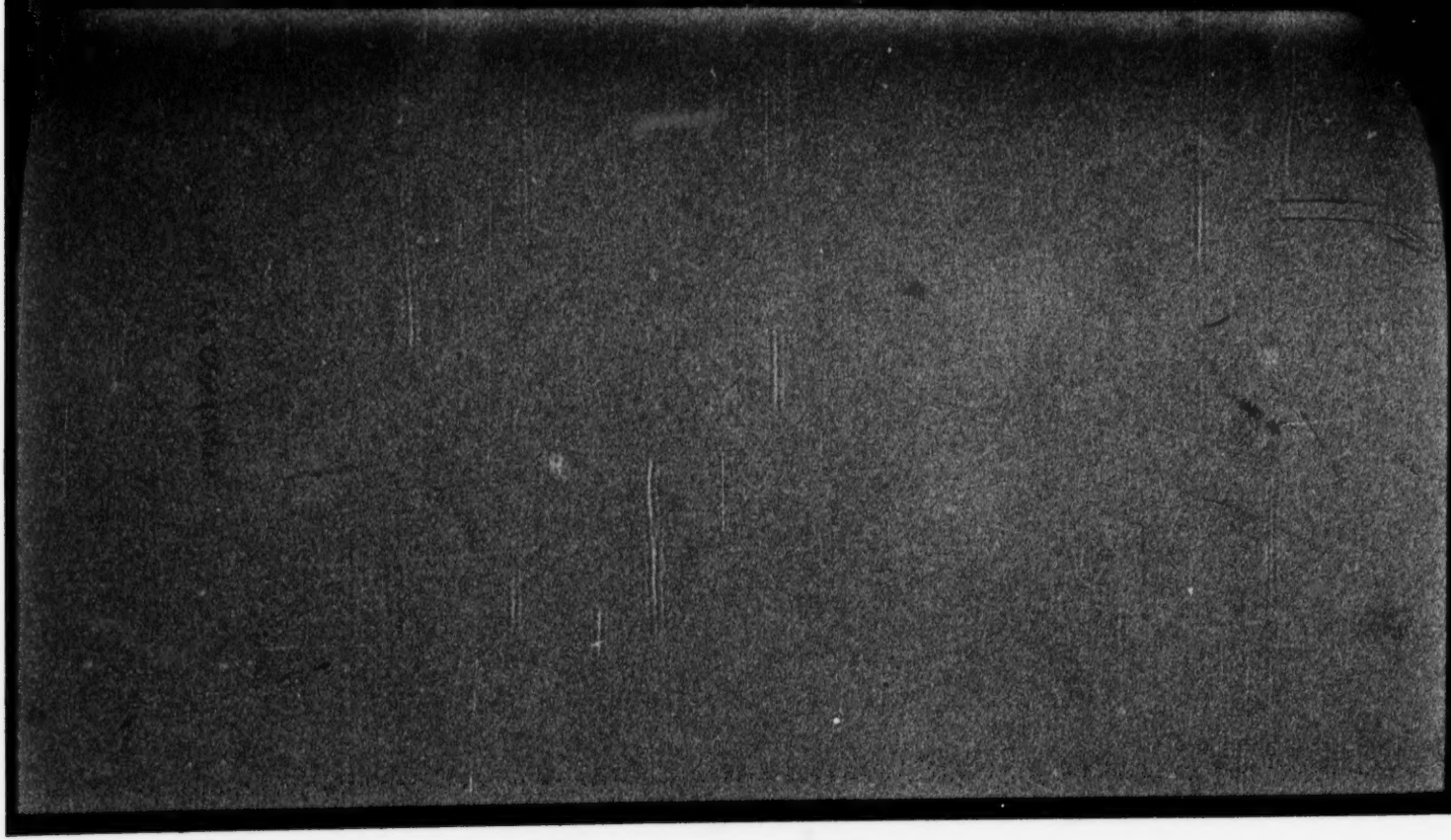


TABLE OF CONTENTS

	Page
OPINION BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISION INVOLVED	2
STATUTES INVOLVED	2
STATEMENT	3
REASONS FOR GRANTING WRIT	5
CONCLUSION	12
APPENDIX A	1a

TABLE OF AUTHORITIES

Cases:

A.M.F. Tuboscope, Inc. v. *Cunningham*, 352 F. 2d 150 (1965)	10
Connecticut General Life Ins. Co. v. *Breslin*, 332 F. 2d 928 (1964)	9
Malkin v. *Dubinsky*, 14 F.R.D. 38 (1953)	10
Olund v. *Swarthout*, 459 F. 2d 999 (1972)	5
Tights, Inc. v. *Stanley*, 441 F. 2d 336 (1971)	5, 9
Western Geophysical Co. of America v. *Bolt Assoc., Inc.*, 440 F. 2d 765 (1971)	9

Constitutional Provision:

The Seventh Amendment to the Constitution of the United States	10, 12

Statutes:

Federal Rules of Civil Procedure, Rule 7 (a), 28 U.S.C.A. ——— 9

Federal Rules of Civil Procedure, Rule 8 (e) (1), 28 U.S.C.A. ——— 6, 7, 9

Federal Rules of Civil Procedure, Rule 38 (b), 28 U.S.C.A. ——— 5, 6, 10

Federal Rules of Civil Procedure, Rule 39 (b), 28 U.S.C.A. ——— 10, 12

Other Authorities:

9 Wright and Miller, Federal Practice and Procedure, Civil, Sec. 2320, 2334 ——— 8, 11

IN THE

Supreme Court of the United States

October Term, 1971

No. .....

ERIKA OLUND,
Plaintiff-Appellee,

vs.

RUSSELL L. SWARTHOUT,
Defendant-Appellant.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Russell L. Swarthout prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled cause on May 5, 1972.

OPINION BELOW

The opinion of the Court of Appeals for the Sixth Circuit, reported in 459 F. 2d 999 (1972), is printed in Appendix A hereto, infra, p. 1 a.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was decided and filed on May 5, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the Trial Court's denial of a jury trial, to defendant on the issue of release after a timely demand, which is guaranteed to defendant both by the Constitution of the United States and Rule 38 (b) of the Federal Rules of Civil Procedure?

2. Assuming that defendant's Demand for Jury Trial on the issue of release, filed May 23, 1969, was not timely under Rule 38 (b) because of confusion over which of the plaintiff's replies was the last pleading directed to that issue, did the trial Court abuse its discretion in denying defendant's motion of May 27, 1969, for a jury trial on all issues, under Rule 39 (b), and especially the issue of release?

CONSTITUTIONAL PROVISIONS INVOLVED

The Seventh Amendment to the Constitution of the United States:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

STATUTES INVOLVED

Federal Rules of Civil Procedure, Rule 7 (a), 28 U.S.C.A.:

> (a) Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be al-

lowed, except that the court may order a reply to an answer or a third-party answer. As amended Dec. 27, 1946, effective March 19, 1948.

Federal Rules of Civil Procedure, Rule 8 (e) (1), 28 S.C.A.:

(e) Pleading To Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

Federal Rules of Civil Procedure, Rule 38 (b), 28 S.C.A.:

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at anytime after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

Federal Rules of Civil Procedure, Rule 39 (b), 28 S.C.A.:

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

STATEMENT

After commencement of plaintiff's tort action on Decem- 28, 1964, in the United States District Court For the stern District of Michigan, Southern Division, with isdiction founded on diversity of citizenship and an ount in controversy exceeding $10,000.00, a pretrial was

held on June 24, 1968. At that time, defendant requested and received permission from the Court to file an amendment to his answer in order to plead an affirmative defense of release. The defendant's Amendment to Answer and Exhibit was filed on June 27, 1968. Plaintiff subsequently tendered her reply to defendant's Amendment to Answer on July 5, 1968. Defendant then filed a Motion to Strike Plaintiff's Reply to Defendant's Amendment to Answer for plaintiff's failure to comply with Rule 8 (e) (1) of the Federal Rules of Civil Procedure. The hearing on defendant's motion was September 9, 1968; the District Court docket entry reflects: "Sept. 9, 1968/Deft's motion to strike pltf's reply to deft's affirmative defense withdrawn by Court—ptf. will submit another reply."

Seven months later plaintiff's failure to file another reply prompted defendant on April 1, 1969, to file an additional Motion to Strike Plaintiff's Reply to Defendant's Amendment to Answer, dated July 5, 1968. District Court docket entry recites: "Apr. 1, 1969/Motion to strike ptf's reply to deft's amendment to answer with supporting brief, affidavit and proof of service filed, Hearing Apr. 14/69."

On April 14, 1969, the Trial Court heard argument on this motion and ordered plaintiff to file another reply to defendant's Amendment to Answer within 30 days. The Plaintiff complied with this order by filing Plaintiff's Amended Reply to Defendant's Amendment to Answer on May 14, 1969. The defendant, on May 23, 1969, nine days later, filed a timely demand for jury trial not only as to the issue of release alone but also addressed his jury demand to all issues. District Court docket entry: "May 23, 1969/Deft's demand for jury trial, filed." The motion for a jury trial on all issues was heard on July 7, 1969, and denied by an order of the Court on September 18, 1969.

District Court docket entry: "Sept. 18, 1969/Order denying motion for a jury trial, with exhibit filed." Despite the assertion of the defendant that his timely filing of a jury demand, within ten (10) days after the service of the last pleading, which was the Plaintiff's Amended Reply to Defendant's Amendment to Answer, in accordance with Rule 38 (b) of the Federal Rules of Civil Procedure, entitled him to a jury determination as of right, at least on the issue of release; the Court alone then proceeded to hear and decided all the issues in favor of plaintiff.

REASONS FOR GRANTING THE WRIT

1. In affirming the Trial Court's denial of defendant's right to a trial by jury on the theory that the jury demand of the defendant was not timely within the meaning of Rule 38 (b), the Sixth Circuit Court of Appeals indulged in the following assumptions:

> "The Amended Reply, introduced no new issues into the action. The issue of release was asserted and joined in July, 1968". *Olund* v. *Swarthout*, 459 F. 2d 999.

The first premise by the Sixth Circuit that the Plaintiff's Amended Reply to Defendant's Amendment to Answer, dated May 14, 1969, introduced no new issues into the action is in error. In order to start the running of the ten day period during which a jury trial may be demanded under Rule 38 (b), a pleading is not required to raise a new issue, it may simply deny allegations contained in an opposing party's prior pleading which does raise a new issue or allege matters in avoidance of a claim set up in this prior pleading. *See Tights, Inc.* v. *Stanley*, 441 F. 2d 336 (1971), wherein at footnote 21 the Court stated:

> "Respondents assert that Tights failed to make timely demands for jury trial. However, the issues

> of validity and infringement raised by the respective counterclaims are, in each case, identical to the issues of validity and infringement raised by the original complaints. Thus, the last pleadings directed to those issues are the replies to the counterclaims. Since Tights joined its demand for jury trial with its reply in each case, the demands were clearly filed within the requisite ten-day period. See Federal Rules of Civil Procedure, Rule 38 (b)."

The second premise by the Sixth Circuit that the issue of release was asserted and joined in July, 1968, is in error. In order to place the question of release at issue and commence the running of the ten day period specified in Rule 38 (b), on July 5, 1968, Plaintiff's Reply to Defendant's Amendment to Answer must qualify as the last pleading directed to the issue of release. If plaintiff's reply did not meet the requirements of a pleading as set forth in the Federal Rules Of Civil Procedure, Rule 8 (e) (1), then it is a nullity which would neither place the matter of release at issue nor initiate the start of the ten day jury demand period. Since the reply cannot be considered a pleading (Appendix A, hereto, infra p. 5a, Plaintiff's Reply to Defendant's Amendment to Answer), the last pleading directed to the issue of release is the Court ordered plaintiff's amended reply (Appendix A, hereto, infra p. 9a, Order . . . Allowing Plaintiff Thirty Days to File Reply to Defendant's Amendment to Answer), filed by plaintiff on May 14, 1969.

Appellant contends that the record and docket entries of this cause amply demonstrate that the plaintiff's reply of July 5, 1968, was not a pleading acceptable to the Trial Court and therefore not a last pleading within Rule 38 (b). Immediately following service of plaintiff's reply defendant filed a Motion to Strike Plaintiff's Reply to Defen-

dant's Amendment to Answer because it did not conform to the requirements of a pleading as set forth in the Federal Rules of Civil Procedure, Rule 8 (e) (1). The hearing on this motion was held on September 9, 1968. It was agreed that an order be prepared by defendant's then attorney Robert Childs and submitted to plaintiff's counsel for approval, striking the plaintiff's reply and giving the plaintiff 30 days in which to file another reply. This is corroborated by Mr. Fisk, plaintiff's counsel, at a subsequent hearing held on April 14, 1969. The Trial Court heard argument on defendant's Motion to Strike Plaintiff's Reply to Defendant's Amendment to Answer. At page 19 of the hearing transcript, plaintiff's counsel stated:

> "I believe the hearing was held when Mr. Childs was here and when it was agreed in Court that I would file an amended reply to their Answer, on September ...., 1968. And Mr. Childs had then withdrawn from the proceedings, and we had a new attorney. So it was my understanding that such an order would be drafted and submitted to me, I would prove it, it would strike my earlier reply, and give me a reasonable time, 30 days if I recall correctly, in which to reply."

As averred in defendant's second Motion to Strike Plaintiff's Amended Reply to Defendant's Amendment to Answer, filed on April 1, 1969, defendant's attorney Childs had prepared and submitted a proposed order to plaintiff's attorney striking the first reply and giving plaintiff 30 days in which to file a new one. But, because Mr. Fisk never approved the proposed order it was never entered. However, it is apparent from the foregoing quote, that plaintiff's attorney was fully aware of his obligation to file a new reply but wholly neglected to do so until defendant's trial attorney, William A. Bedrosian, filed the

second motion to strike plaintiff's reply and plaintiff's attorney was ordered by the Court to file the new reply within 30 days after the entry of such order on April 14, 1969, (Appendix A hereto, infra, p. 9a, — Order . . . Allowing Plaintiff's Amended Reply to Defendant's Amendment to Answer). The order was honored by the plaintiff's filing of Plaintiff's Amended Reply to Defendant's Amendment to Answer on May 14, 1969.

There is only one inescapable conclusion, that the Sixth Circuit completely overlooked defendant's successful attack on the sufficiency of plaintiff's first reply which resulted in the order of the Court dated April 14, 1969, directing plaintiff to file another reply within 30 days.

Since the last reply by plaintiff was entitled Plaintiff's Amended Reply to Defendant's Amendment to Answer, the Court of Appeals relied on the authority of 9 Wright and Miller, Federal Practice and Procedure, Civil, Sec. 2320, which says in part:

> "... but the amendment does not revive a right previously waived, to demand jury trial on the issues already framed by the original pleadings. Nor does the late demand create a right to a jury trial on issues raised by the amended or supplemental pleadings if those issues were fairly raised by the original pleadings."

Thus the essential question is whether defendant's Amendment to Answer and plaintiff's reply thereto framed the issue of release or fairly raised it. The Trial Court did not think so, because it ordered plaintiff to file another reply which properly responded to defendant's affirmative allegations of release. Hence, the issue of release was not framed or fairly raised until the Court's order was complied with by the filing of Plaintiff's Amended Reply to Defendant's Amendment to Answer on May 14, 1969.

In addition, we are not presented here with the situation of a party voluntarily amending his pleadings and demanding at the same time a jury trial as in *Western Geophysical Co. of America* v. *Bolt Assoc., Inc.*, 440 F. 2d 765 (2d Cir. 1971), and *Connecticut General Life Insurance Company* v. *Breslin*, 332 F. 2d 928 (1964), which were relied on by the Sixth Circuit. Both cases are clearly distinguishable from this matter. First, plaintiff was ordered by the Court to amend a defective pleading. Second, the defendant, not the plaintiff, is demanding jury trial.

In considering defendant's timely jury demand, appellant would ask the Court to consider Tights, Inc., supra, which was decided approximately one month after Western Geophysical, supra. The Fourth Circuit ruled in Tights, Inc., that the plaintiff's reply was the last pleading directed to an issue asserted in defendant's counterclaim even though the issue was identical to one contained in plaintiff's original complaint and that a jury demand filed with the plaintiff's reply entitled plaintiff to a jury trial.

There appears to be a distinct conflict between the Fourth Circuit ruling on Tights, Inc., supra, and the Sixth Circuit interpretation in appellant's case. Put simply, if a counterclaim pleading an issue identical to one alleged in a prior complaint revives a right to a jury trial in Tights, Inc., supra, then a second reply addressed to the same issue as its predecessor would also bring back defendant's right. This conflict only the Supreme Court can resolve.

In summation, plaintiff's amended reply was a pleading within the meaning of Rule 7 (a), Federal Rules of Civil Procedure. It was ordered by the Trial Court. It was the last pleading directed to the issue of release, because plaintiff's reply was successfully attacked by defendant as being legally insufficient under Rule 8 (e) (1), Federal Rules of

Civil Procedure and is therefore a nullity of no force and effect whatever. Since defendant filed a timely jury demand within ten days of being served with the plaintiff's amended reply, he was entitled as a matter of right to a jury trial on the issue of release under Rule 38 (b), Federal Rules of Civil Procedure.

For the Trial Court to ignore defendant's timely jury demand and to hear the issue of release without a jury was an arbitary disregard of defendant's right to a jury trial and a violation of the Seventh Amendment to the Constitution of the United States.

2. Assuming for the sake of argument that defendant's jury demand was not timely because of confusion or mistake as to which of plaintiff's two replies to defendant's amendment to answer was a last pleading within the meaning of Rule 38 (b), defendant promptly followed up his jury demand on May 26, 1969 with a motion for jury trial on all issues under Rule 39 (b). The Court's denial of this motion with respect to the issue of release was clearly an abuse of discretion.

In a like situation another Federal Court granted a motion for jury trial where the demand was late because an amendment to a complaint and a stipulation caused confusion as to when the last pleading was served. *Malbis* v. *Dubinsky*, 14 F.R.D. 38 (1953). In a proper case, a trial Court will be reversed for abusing its discretion by denying a motion for a jury trial. *A.M.F. Tuboscope, Inc.* v. *Cunningham*, 352 F. 2d 150 (1965).

Furthermore, two opposing viewpoints have arisen in the various United States Courts of Appeals as to when discretion should be exercised by a trial judge under Rule 39 (b):

"There is a wide divergence of view on how a court should exercise its discretion on a motion under Rule 39 (b). It is the rule in some courts that 'the court should grant a jury trial in the absence of strong and compelling reasons to the contrary.' Elsewhere it has been held that the court has no discretion to grant jury trial when there was on timely demand unless there are special circumstances excusing the oversight or default." *9 Wright and Miller, Federal Practice and Procedure, Civil, Sec. 2334.*

Such a conflict can only be resolved in this Court by granting review.

Yet there is an added reason for granting defendant's motion for a jury trial not only with respect to release but on all issues. At the commencement of this lawsuit the defendant was serving on the bench in his resident municipality and is a member of the State Bar of Michigan. If the Court, without a jury, were placed in the precarious situation of deciding the question of damages and held, as it did, for the plaintiff; the defendant would then be heard to say that the court subconsciously acted prejudically to overcome the strong presumption which exists in the minds of all people — that when a member of the same profession makes decisions relating to another member of the bar he is not completely objective and unsympathetic to that member or the impact of the decision on all members of the bar — the profession itself. Since a decision for the defendant strengthens this existing assumption that the profession takes care of its own, it is not improbable that a judicial trier of the fact might feel an obligation to demonstrate impartiality by reaching a decision that ignores the proven facts totally unfavorable to the non-legal litigant. By submitting all the facts to a jury there would be no question,

consciously or subconsciously, of a complete, fair and impartial trial and *no extraordinary burden of judgment on the trier of the facts who took sixteen (16) months to decide this case.*

This case squarely presents two courses open to the federal judiciary: a continued commitment to the spirit of the 7th Amendment to the Constitution of the United States and a common law tradition stretching back several hundred years which favors jury determinations on questions of facts balanced against discouraging jury trials because as a Court will occasionally articulate in denying Rule 39 (b) motions, the docket is too overcrowded and it takes longer to try a case to a jury.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,
RUSSELL L. SWARTHOUT,
Pro Se,
8900 E. Jefferson Avenue, #202-3
Detroit, Michigan 48214
823-3420

No. 71-1716

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

ERIKA OLUND,
Plaintiff-Appellee,

v.

RUSSELL L. SWARTHOUT,
Defendant-Appellant.

APPEAL from the United States District Court for the Eastern District of Michigan, Southern Division.

Decided and Filed May 5, 1972.

Before PHILLIPS, Chief Judge, McCREE, Circuit Judge, and ENGEL*, District Judge.

PHILLIPS, Chief Judge. This is an appeal from a judgment for plaintiff in a diversity tort action. We affirm.

Only a brief statement of the procedural facts is required. Erika Olund filed this action against Russell Swarthout in December, 1964. Swarthout answered in May, 1965, denying the material allegations of the complaint. Some three years later, following the pretrial conference, Swarthout amended the answer to interpose the affirmative defense of release. One week later Olund filed a reply to the amended answer, asserting that the release was void and unenforceable by reason of procurement through fraud, duress, coercion, and undue influence.

---

*Honorable Albert J. Engel, Judge, United States District Court for the Western District of Michigan, sitting by designation.

In May, 1969, Olund filed an amended reply to the amended answer. Swarthout filed a demand for a trial by jury as a matter of right on all issues nine days thereafter. He futher moved for a jury trial on all issues as a matter of discreation. Following a hearing on the motion, Judge Thomas P. Thornton denied the motion and ordered the entire case tried without a jury.

Trial to the Court consumed five trial days; conflicting evidence was introduced as to all material issues. Judge Thornton found for plaintiff in the amount of $15,000 compensatory damages. Swarthout appeals, contending that he was deprived of his right to trial by jury and that the verdict was unsupported by the evidence and excessive.

Only the jury trial issue requires extended consideration. The Federal Rules of Civil Procedure provide:

"Rule 38.
"JURY TRIAL OF RIGHT
• • •

"(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party."

"Rule 39.
"TRIAL BY JURY OR BY THE COURT
• • •

"(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to

demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issue."

Before this Court Swarthout contends that the filing of Olund's amended reply gave him ten days in which to demand a jury trial on the issues presented therein and that his demand was served within that ten day period. He further asserts that a jury trial on all issues should have been ordered as a discretionary matter. We disagree with these contentions. The demand for trial by jury was first injected into the case some four and one-half years after the action was commenced, following pleading amendments, extensive discovery, and a pretrial conference. The amended reply introduced no new issues into the action. The issue of release was asserted and joined in July, 1968. Under these circumstances, the demand was untimely. *See Western Geophysical Co. of America* v. *Bolt Assoc., Inc.* 440 F. 2d 765, 769 (2d Cir. 1971); *Connecticut General Life Ins. Co.* v. *Breslin*, 332 F. 2d 928, 931 (5th Cir. 1964); 5 Moore, Federal Practice, ¶ 38.41 (2d ed.); 9 Wright & Miller, Federal Practice & Procedure, Civil § 2320. Further, we find no abuse of discretion under R. 39(b), Fed. R. Civ. P.

Swarthout's contentions that there is insufficient evidence to support the findings of liability, unenforceability of the release signed by Olund, and amont of damages are wholly without merit. We have given "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses' and are unable to say that his findings of fact are clearly erroneous. R. 52(a), Fed. R. Civ. P.

Swarthout also urges that the release could not be avoided by Olund without tender of the consideration given in ex-

change therefor, relying on the law of Florida, where the release was executed. We need not reach this issue. The judgment was offset by the consideration. This court "must disregard any error . . . which does not affect the substantial rights of the parties." R. 61, Fed. R. Civ. P.; *see* 28 U.S.C. § 2111. Further, the issue was not raised below and will not be considered on appeal. *See Wiper* v. *Great Lakes Engineering Works,* 340 F. 2d 727, 731 (6th Cir.), *cert. denied,* 382 U.S. 812 (1965).

Affirmed.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIKA OLUND,
Plaintiff,

vs. Civil Action No. 16184

RUSSELL SWARTHOUT,
Defendant.

PLAINTIFF'S REPLY TO DEFENDANT'S AMENDMENT TO ANSWER

In Reply to Defendant's Amendment to Defendant's Answer wherein is added what is therein described as "an additional Special and Affirmative Defense", and in accordance with the proceedings of the Court and the agreement of the parties at the Pre-Trial Conference held June 24, 1968, Plaintiff, by her Attorney, GEORGE F. FISK, files this Reply; and Plaintiff says:

I

Replying to Paragraph III, Plaintiff says that the said alleged Release is without legal effect or validity for the following facts and reasons:

(A)—That Plaintiff signed the alleged Release only because of the coercion and duress and undue influence exercised upon, and against her, as hereafter set forth;

(B)—That on the day or days shortly before the date of and the signing of the alleged Release, the Defendant and the Defendant's friend, agent and assistant, Thomas G. O'Connell (who later witnessed

the alleged Release) had threatened and menaced Plaintiff with words to the effect that Plaintiff would lose her job and otherwise regret it if Plaintiff caused Defendant any trouble at all; further, Plaintiff was convinced that these threats could be, and would be, carried out unless she complied with Defendant's wishes in the matter;

(C)—That Plaintiff signed the alleged Release when under great emotional strain; when in fear of the Defendant who had earlier treated her with great violence; also when in fear of Defendant's friend, agent and assistant who had earlier threatened her great harm; also at a time when Plaintiff was alone in her home with no counsel or friend to support or help her deal with Defendant and his friend and agent, both of whom were Lawyers and Judges at all times when they dealt with Plaintiff in reference to the signing of the alleged Release;

(D)—That at no time was there any effort at reasonable discussion or negotiation, but only the emotional and menacing demand and insistence that Plaintiff sign the single copy of the Release which the Defendant had brought with him, and that Plaintiff accept possession of the $1,000.00 cash which the Defendant had brought with him;

(E)—That Plaintiff requested a copy of the Release before signing, and one was hastily typed and signed by all present; when the signatures were obtained, the Defendant and his friend hurriedly left the premises; a "copy" of the second signed copy of the alleged Release is attached to this reply and made a part hereof;

(F)—That Plaintiff was at the time and place mentioned, *because* of the traumatic injury she had suffered from Defendant, *because* of the threats and menaces made against her by Defendant and his friend, *because* of the quite incredulous and unsympathetic treatment she had received from the police, *because* of the knowledge that no Attorney desired a case against another Attorney, particularly when that other Attorney was also a Judge (and had friends who were Judges), weakened, frustrated, fearful, and, hence, very susceptible to the type of coercion inflicted upon her;

(G)—The alleged Release, signed under the circumstances described, *was drafted by the Defendant, an Attorney,* and covers with great particularity all of the many types of causes and actions which it purports to release; it then has a clause which clearly establishes that the intent of the Release was not to, and did not, apply to one class of actions, namely, actions founded on "criminal acts of violence xxx of any nature whatsoever"; and Plaintiff's Complaint in the captioned cause clearly falls within those excluded "criminal acts of violence xxx of any nature whatsoever".

WHEREFORE, Plaintiff asks Judgment as prayed in the Complaint.

/s/ GEORGE F. FISK,
Attorney for Plaintiff
2060 Coolidge Highway
Berkley, Michigan 48072
Lincoln 6-3636

Dated: July 2, 1968
Berkley, Michigan

Release

I, Erica Olund of Miami, Florida, for and in consideration of One Dollar, to me in hand paid by r. Swarthout, do by these presents for myself, my heirs, executors and administrators, remise, release and forever discharge Russell Swarthout, of Detroit, Mich. his heirs, executors, and Administrators, of and from any and all manner of action or actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, argeements, promises, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or equity, which against him I have had, now have, or which my heirs, executors, or administrators, hereafter can, shall, or may have, for or by reason of any matter, cause, or thing whatsoever.

I further state freely and voluntarily that Russell Swarthout has at no time ever committed any criminal act of violence towards me, or upon my being, of any nature whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this First day of March, 1963.

/s/ ERIKA OLUND

IN THE PRESENCE OF:
/s/ R. L. SWARTHOUT
/s/ T. G. O'CONNELL

Mar. 1, 1963

I, Russell L. Swarthout will not proceed either civil or criminally against Erica Olund for any past acts or present acts as of this date.

/s/ R. L. SWARTHOUT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIKA OLAND,
Plaintiff,

vs.

RUSSELL L. SWARTHOUT,
Defendant.

Civil Action No. 26184

ORDER REQUIRING PLAINTIFF TO POST SECURITY BOND FOR COSTS AND ALLOWING PLAINTIFF THIRTY DAYS TO FILE REPLY TO DEFENDANT'S AMENDMENT TO ANSWER

At a session of said Court, held in the Federal Building, in the City of Detroit, County of Wayne, State of Michigan, this 14th day of April, 1969.

PRESENT: HONORABLE THOMAS P. THORNTON, Judge, United States District Court.

This matter having been brought on for hearing on Defendant's Motion To Require Plaintiff To Post Security Bond For Costs and also on Defendant's Motion To Strike Plaintiff's Reply To Defendant's Amendment To Answer, and the Court being fully advised in the premises, and after oral argument by counsel for respective parties,

IT IS HEREBY ORDERED that the Plaintiff Erika Olund, be required to post a Five Hunderd ($500.00) Dollar bond as security for costs incurred by the Defendant;

IT IS FURTHER ORDERED that the Plaintiff, Erika Olund, through her attorney, George F. Fisk, be allowed

thirty (30) days from the date of the signing of this order to reply to Defendant's Amendment To Answer.

THOMAS R. THORNTON
District Judge

A TRUE COPY
FREDERICK W. JOHNSON, Clerk
/s/ By: KATHLEEN FARNSWORTH,
Deputy Clerk